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Legal Risk Management Tip
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SEC ADOPTS FORM PF TO HELP MONITOR SYSTEMIC RISK

On October 26, 2011, the Securities and Exchange Commission ("SEC") unanimously adopted new Rule 204(b)-1 under the Advisers Act, which requires all SEC-registered investment advisers with at least $150 million in private fund assets under management ("AUM") to report systemic risk information to the SEC on Form PF. The data collected on Form PF will be used by the Financial Stability Oversight Council ("FSOC"), a regulatory body created to monitor risks in the U.S. financial system. The SEC has stated that while it intends to keep confidential the non-public information about private funds and their trading strategies elicited by Form PF, the SEC may use that information gathered from Form PF to pursue various actions, including focused exams, regulatory inquiries and even enforcement.

1. Who is Required to File on Form PF?

Any registered investment adviser that advises one or more private funds[1] and has at least $150 million in regulatory AUM attributable to private funds must file Form PF with the SEC. The final rule excludes from the reporting requirements advisers to private funds who manage in the aggregate less than $150 million in AUM.

Under Rule 204(b)-1, the content and frequency of a private fund adviser's reporting obligations vary based on the types of private funds advised and the adviser's AUM. Accordingly, private fund advisers are divided into two groups based upon AUM thresholds: large private fund advisers and small private fund advisers.

Large Private Fund Advisers Include:

- Advisers with at least $1.5 billion in AUM attributable to hedge funds;[2]
- Advisers with at least $2 billion in AUM attributable to private equity funds;[3]
- Advisers with at least $1 billion in AUM attributable to private liquidity funds[4] and registered money market funds.

All other advisers with at least $150 in private fund AUM are deemed to be small private fund advisers.

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[1] "Private funds" are defined as funds relying on an exemption from registration as an investment company provided by Section 3(c)(1) or Section 3(c)(7) of the Investment Company Act of 1940.
[2] Form PF defines "hedge fund" generally to include any private fund having any one of three common characteristics of a hedge fund: (a) a performance fee that takes into account market value (instead of only realized gains); (b) high leverage; or (c) short selling.
[3] Form PF defines "private equity fund" as any private fund that is not a hedge fund, liquidity fund, real estate fund, securitized asset fund or venture capital fund and does not provide investors with redemption rights in the ordinary course.
[4] For purposes of Form PF, a "liquidity fund" is any private fund that seeks to generate income by investing in a portfolio of short term obligations in order to maintain a stable net asset value per unit or minimize principal volatility for investors.

2. What Information is Required on Form PF?

All reporting advisers (*i.e.*, those advisers with at least $150 million in regulatory AUM attributable to private funds) are required to complete Sections 1a and 1b of Form PF. Section 1a requires identifying information of the adviser (*e.g.*, the adviser's total gross and net AUM and the gross and net AUM attributable to certain types of private funds). Furthermore, Section 1b is required for each private fund advised by a reporting adviser. Section 1c is the final part of Section 1 and requires advisers to report information regarding the hedge funds they manage, if any. Advisers required to complete Section 1c will report their hedge fund's investment strategies and the percentage of the fund's assets managed using high-frequency trading strategies.

While all private fund advisers with $150 million or more in AUM will be required to complete Section 1 of Form PF, only Large Private Fund Advisers are required to complete Sections 2, 3 or 4. For example, private fund advisers with at least $1.5 billion in hedge fund AUM must complete Section 2 and provide financial and trading information on the hedge funds they advise. Similarly, private fund advisers that manage one or more liquidity funds having at least $1 billion in AUM are required to complete Section 3 of Form PF, and Section 4 of Form PF is required to be completed by advisers with at least $2 billion in private equity fund AUM.

3. When is an Adviser Required to File Form PF?

Since Form PF was initially proposed, the SEC has delayed the deadline to prepare for its completion. The SEC has adopted a two-stage phase-in period for initial compliance with Form PF filing requirements. Therefore, most private fund advisers will begin filing Form PF for fiscal periods ending on or after December 15, 2012. Those with $5 billion or more in private fund assets must begin filing Form PF following the end of fiscal periods ending on or after June 15, 2012. The regularity with which private fund advisers must file is as follows:

- **Small private fund advisers:** File Form PF *annually* within 120 days of the end of each fiscal year.
- **Large private fund advisers**: File Form PF *quarterly* within 60 days of the end of each fiscal quarter.
- **Large liquidity fund advisers:** File Form PF *quarterly* within 15 days of the end of each fiscal quarter.
- **Large private equity fund advisers**: File Form PF *annually* within 120 days of the end of the fiscal year.

4. Conclusion

Form PF is extensive and complex and will require substantial efforts by private fund managers in advance of the compliance dates in order to be prepared to file timely and accurately. Private fund advisers likely to meet the $150 million AUM threshold should review Form PF and begin planning now for filing.

For more information about this topic or assistance in completing Form PF, please contact us at (619) 298-2880, info@jackolg.com or visit www.jackolg.com. Thank you.

Author: Brent M. Cunningham, Associate; Editor: Michelle L. Jacko, Esq., Managing Partner, JLG. JLG works extensively with investment advisers, broker-dealers, investment companies, hedge funds and banks on legal and regulatory compliance matters.